UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1990/SR.22
2 April 1990

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 January 1990, at 10 a.m.

Chairman: Mr. BADAWI EL SHEIKH

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STUDY OF PROBLEMS, POLICIES AND PROGRESSIVE MEASURES RELATING TO THE MORE EFFECTIVE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

1. Mr. TÜRK (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), replying to the questions and comments formulated by members of the Committee at the previous meeting concerning his preliminary report (E/CN.4/Sub.2/1989/19), said that, as Mr. Alston, Mr. Alvarez Vita, Mr. Muterahejuru and Mr. Texier had said, any study by the Sub-Commission of the realization of economic, social and cultural rights was a long-term project, and that the Sub-Commission and the Committee should work together constantly in that endeavour. For example, it would be useful for the Chairman of the Committee or one of the members to attend meetings of the Sub-Commission on that subject.

2. In response to Mr. Muterahejuru's general comment that the report to the Sub-Commission was optimistic in tone, he said that, by definition, a study of standards for the realization of human rights dealt largely with the situation as it should be, rather than with the situation as it actually was. If it was assumed that the implementation of certain standards could change things, the subsequent analysis was bound to convey a certain optimism.

3. In reply to the remarks of Mr. Alston, Mrs. Jiménez Butragueño, Mr. Neneman, Mr. Simma and Mr. Texier on the current changes in eastern Europe and the fear that the realization of economic, social and cultural rights might receive less attention there than in the past, he reminded members that all the eastern European countries had supported the Declaration on the Right to Development, the preamble to which stated that the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms could not justify the denial of other human rights and fundamental freedoms. Although it was not always easy to put that principle into practice, and there was sometimes a conflict of priorities between particular groups of human rights, it was essential to keep in mind the concept of the interdependence and indivisibility of all human rights and all fundamental freedoms, which was also acknowledged in the Declaration.

4. On the subject of structural adjustment, he concurred with Mr. Neneman's analysis of the situation in eastern Europe and said that it would be useful to study, at some later stage, the effects of structural adjustment on the realization of economic, social and cultural rights there.

5. In respect of the remarks made by Mr. Alston, Mr. Konate, Mr. Simma and Mr. Texier on the obligations inherent in the realization of economic, social and cultural rights, he continued to think that, since all the human rights bodies of the United Nations dealt with the human rights activities of States, it was appropriate to agree upon a common approach for the United Nations as a whole to the duties of States in the field of human rights.

6. Mr. Alston, Mr. Dao, Mrs. Jiménez Butragueño and Mr. Neneman had referred to the use of indicators to measure progress in realizing economic, social and cultural rights. Like Mr. Dao, he considered that the International Labour Organisation (ILO) could contribute some valuable experience in that field, and that there was a need to enter into more detailed consultation with the ILO. States themselves should be responsible for defining the indicators which the international organizations would need to decide whether there had

been a real change in the situation of those countries. The progress report which was to be prepared for the next session of the Sub-Commission would pay particular attention to the question of indicators.

7. In reply to those members of the Committee who had referred to violations of economic, social and cultural rights, he said that it was difficult to provide any clear-cut answers on the subject. However, it was sometimes justified to speak of a consistent pattern of gross violations of economic, social and cultural rights. In that connection, he recalled that in previous years (1985-1989), when the issue of human rights in Romania had been discussed, there had been few references to violations of economic, social and cultural rights in that country, although it had been clear, even then, that consideration of the situation in Romania revealed a consistent pattern of gross violations of those rights.

8. Mrs. Jiménez Butragueño and Mr. Konate had expressed doubts about the appropriateness of the word "poverty". He had himself suggested that the term "impoverishment" should be used instead. The concept of poverty was, in any case, merely a starting-point for the consideration of the practical problems involved.

9. On the subject of international co-operation and Mr. Konate's remark that States had a duty to draw up international development policies which would be consistent with truly international methods of co-operation, he said that, in his opinion, the first problem was to define the scope of international co-operation in the promotion of economic, social and cultural rights.

10. In reply to the remarks made by the Chairman in his capacity as a member of the Committee, he said that the issue of the scope and overall concept of the report - namely, whether to adopt a selective or a global approach - was a fundamental one. In the past, he had adopted a selective approach, but he would bear in mind the Chairman's remarks about the need to define certain basic concepts and to make a more detailed study of the links between civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

11. The CHAIRMAN said that he wished to stress the vital importance of co-operation and dialogue between the Committee, the other treaty bodies and United Nations organs such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

GENERAL DISCUSSION ON THE RIGHTS CONTAINED IN ARTICLE 11 OF THE COVENANT (E/1989/22, para. 332) (agenda item 8)

12. Mr. ALSTON said that it would perhaps be useful to remind those who might not be familiar with the Committee's working methods that the general discussion was intended to help the Committee itself to gain a better understanding of the meaning, in both theory and practice, of the various rights contained in the Covenant. The Covenant's scope was so broad that the Committee could not hope to find among its members experts in housing, discrimination, nutrition and all the other subjects involved in economic, social and cultural rights. It was, therefore, extremely important to take advantage of the general discussion in order to hear the opinions and suggestions of representatives of other United Nations bodies and experts from outside the United Nations system.

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13. In respect of the rights contained in article 11 of the Covenant, the Committee must keep in mind the particular problems which had arisen and try to devise constructive measures and make suggestions about the way it should act in the future.

14. He hoped that a number of issues would be discussed during the debate. The first concerned the right to housing: in his opinion, the Committee would need to reflect on the nature of the obligations arising from the Covenant and, for example, try and decide upon the three basic questions which it would put to States parties if it were to be limited to three questions.

15. It would also be necessary to consider ways of guaranteeing the effective and immediate implementation of the principle of non-discrimination. Was there a need to insist on that aspect of the right to housing, or would such a step be dangerous? In the United States, for example, there was a mass of legislation designed to protect citizens against discriminatory measures which prevented them from exercising their rights, but the right to housing itself was not recognized.

16. The relationship between civil and political rights, on the one hand, and economic, social and cultural rights, on the other, was another issue on which the Committee should spend some time. The Committee had always, and rightly, rejected the United States claim that civil and political rights were more important than economic and social rights, pointing out that such a concept was completely incompatible with the principles of the United Nations. However, when discussing the right to housing, the Committee should, perhaps, pay more attention to the right to freedom of association of tenants, for example, or the right to express an opinion about social policy, or other civil and political rights which could be extremely important for the exercise of the right to housing and other economic rights. Without usurping the functions of the Human Rights Committee, the Committee on Economic, Social and Cultural rights should perhaps try to draw up a number of questions which might, at first sight, seem to refer to civil and political rights but which, in fact, were directly connected with economic rights. No one could imagine the Human Rights Committee refusing to consider the case of a group of tenants, for example, who had complained to it because they could not express their views freely, on the grounds that the complaint was connected with their social situation.

17. As for the right to land, whose importance had been stressed by Mr. Türk, it was difficult to know how the Committee could take due account of that right without States parties complaining that rights were being imposed on them which were not contained in the Covenant. He thought that there was a way out, but called upon other participants to submit their detailed suggestions on the matter during the debate.

18. The Committee was trying to work more closely with the specialized agencies of the United Nations, and had realized the pointlessness of undertaking work which other bodies were already doing. For example, instead of trying to check for itself whether States parties were abiding by the provisions of articles 6 to 9 of the Covenant, it had decided to rely, to a large extent, on the ILO and its Committee of Experts on the Application of Conventions and Recommendations, which were responsible for those issues.

19. What consequences would the new method of working have for the Commission on Human Settlements? The question which arose, and which deserved some thought, was whether the right to housing was really the main preoccupation of the Commission, and whether it could be expected adequately to monitor the extent to which the right to housing was respected. In that connection, the information brochures distributed by the United Nations Centre for Human Settlements (Habitat) were too general to be really useful, and gave very little information about the work of the Centre. He hoped that the Committee would be provided with detailed documentation, written for experts rather than for the general public.

20. Finally, he hoped that the debate would bring forth some constructive answers. On several occasions, members of the Committee had noted with regret that non-governmental organizations had not been present at their debates, and had complained that they did not have enough information. To take the example of Romania, the revelations of the previous months showed that, when the Committee had examined Romania's report, it had done its job very badly. But how could it be blamed for that? The experts had felt that there were problems, but they had not had the information they needed to express a position.

21. It was essential to think about ways of resolving that situation and encouraging the flow of reliable information to the Committee.

22. Mr. LUGVIGSEN (United Nations Centre for Human Settlements - Habitat) recalled that, in resolution 43/181, the United Nations General Assembly had "designated" the United Nations Centre for Human Settlements (Habitat) as the secretariat for the [Global] Strategy [for Shelter to the Year 2000] and the lead agency for co-ordinating and monitoring the relevant programmes and activities of other United Nations organizations and agencies concerned.

23. The Plan of Action drawn up by the Centre for the implementation of the first stage (1989-1991) of the Strategy had been adopted by the Commission on Human Settlements at its twelfth session, and by the General Assembly at its forty-fourth session.

24. Habitat was preparing a series of seminars to publicize the Strategy and to encourage the preparation of national housing strategies inspired by it.

25. The decision to draw up new national strategies or modify existing ones rested with countries: Habitat's task was to encourage Governments to change their attitudes and abandon the role of provider, developer and builder in favour of that of a catalyst.

26. Recognition of the right to adequate housing entailed the preparation of strategies and the implementation of mechanisms to allow everyone to exercise that right in practice. Measures must be taken to guarantee everyone access to land, water resources, building materials and financing. In all those areas, Governments had an important but difficult role to play.

27. The Plan of Action for the first stage of the Global Strategy for Shelter was on three levels: the first concerned action by Member States; the second concerned the United Nations General Assembly, the Economic and Social Council, the Commission on Human Settlements and Habitat; and the third was aimed at the specialized agencies and other United Nations bodies, multilateral bodies

outside the United Nations system, bilateral bodies and non-governmental organizations. United Nations bodies and the specialized agencies should in principle review their programmes in order to identify areas in which they could contribute to the implementation of the Strategy.

28. If the Strategy were to succeed, it was essential that United Nations bodies and agencies should draw up well-focused and harmonized programmes of activity.

29. Habitat considered that the Committee on Economic, Social and Cultural Rights had an important role to play in the implementation of the Strategy, not merely because housing was a right, but also because it was a way of achieving an adequate standard of living and contributing to development.

30. In operative paragraph 2 of resolution 41/146 on the realization of the right to adequate housing, the General Assembly had reiterated "the need to take, at the national and international levels, measures to promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing". The Plan of Action for the implementation of the Global Strategy was consistent with that need.

31. Although the co-ordination of activities undertaken within the United Nations system under the Global Strategy for Shelter was the responsibility of Habitat, the implementation of the Plan of Action lay within the purview of a number of national and international bodies.

32. Human rights bodies at the national and international level should begin to draw up detailed plans to guarantee the rights to land, water, sanitation, etc. Such an initiative would also be consistent with the Declaration on the Right to Development, adopted by the General Assembly at its forty-first session (resolution 41/128), in which the General Assembly had expressed its concern at "the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights", and had declared that "all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms".

33. Everyone should have the right to build a house in the place of their choice. Moreover, building was an economic activity which contributed to growth and development in a country.

34. Habitat called upon the Committee on Economic, Social and Cultural Rights to make strong recommendations for the preparation of a world programme to promote activities to encourage the realization of the right to adequate housing.

35. He acknowledged that the information brochures circulated to the Committee did not go into sufficient detail about the activities of the Centre. He promised to provide the Committee with the full text of the Global Strategy for Shelter as soon as possible.

36. Mr. DAO (International Labour Office) pointed out the links between the rights contained in article 11 of the Covenant and the rights listed in articles 6 to 9, including the right to work, the right to enjoy just and favourable conditions of work and the right to social security. In respect of the right to housing, the ILO had drawn up a number of standards, listed in the ILO Workers' Housing Recommendation, 1961 (No. 115). The Recommendation was extremely broad in scope, covering manual and non-manual workers, self-employed persons, the elderly and retired or disabled persons.

37. The Recommendation defined the goals which national housing policies should seek to attain: encouraging housing construction, so that all workers and their families could have adequate and suitable housing; ensuring, in particular, that migrant workers did not suffer any discrimination; and ensuring that workers spent no more than a reasonable proportion of their incomes on adequate and suitable housing, whether in rent or in payments towards the purchase of housing.

38. The Recommendation also defined the responsibilities of the public authorities. It stated that the relevant national authorities should set up a central body to study and evaluate the housing needs of workers and to draw up housing programmes for them which would, in particular, ensure slum clearance and the rehousing of slum dwellers. Employers' and workers' organizations and other interested groups should be involved in the work of the central body.

39. In respect of accommodation provided by the employer, the Recommendation stated that such a practice was not usually desirable and should not be considered unless the circumstances made it necessary, for example if the enterprise was situated at a great distance from residential areas.

40. In cases where accommodation was provided by the employer, the Recommendation stated that the workers' basic human rights, in particular the right to belong to a trade union, must be recognized, that national legislation and custom must be fully respected when the worker's tenancy was concluded at the end of his contract, and that the rent charged must be reasonable.

41. The Recommendation further stated that the provision by employers of accommodation or services as part of the worker's salary should be prohibited, or regulated in order to protect the worker's interests. The ILO Protection of Wages Convention, 1949 (No. 95) also stated that payment in kind should be prohibited or properly regulated.

42. In respect of the financing of housing, Recommendation No. 115 stated that the competent authorities should, among other things, grant tax relief and loan facilities at moderate rates of interest and should encourage the formation of housing co-operatives.

43. The competent national authorities should also draw up housing standards in order to guarantee building safety and a reasonable level of hygiene and comfort.

44. Other subjects covered in the Recommendation included measures to increase the efficiency of the construction industry, housing construction, decasualization of employment, and urban, rural and regional planning.

45. The Recommendation, which was extremely detailed, also contained suggestions on ways of implementing housing programmes for workers and suggested special programmes for developing countries.

46. Other ILO conventions which dealt with the right to housing were the Safety Provisions (Building) Convention, 1937 (No. 62) and the Safety and Health in Construction Convention, 1988 (No. 167).

47. Finally, on the subject of monitoring, he said that, under article 19 of the ILO Constitution, member States did not report on the status of their legislation and practice in the field covered by a recommendation or convention which they had not ratified except at the request of the ILO Governing Body. It was only in such cases that the Committee of Experts on the Application of Conventions and Recommendations carried out an overall study to decide the extent to which the provisions of the instrument in question were respected and the difficulties involved in implementing it.

48. The ILO considered that it was essential to maintain close links with Habitat, and had worked with it on various projects relating to accommodation for workers engaged in public works projects or rural development programmes, as well as on a project on training for managers in the construction industry. The ILO hoped that it would be able to develop and strengthen that collaboration in the future.

49. Mr. LECKIE (International Habitat Coalition) said that his statement would concentrate basically on the main issues involved in the right to housing. Unfortunately, there was no legal definition of that right which laid out its scope in detail and it was, therefore, difficult to know how far States were meeting their obligations in that area and how fully individuals enjoyed the benefits of the right to housing in practice.

50. What did article 11 (1) of the Covenant say about the right to housing, and what interpretation could be placed on the text? Firstly, the right to housing was a right of the individual, and not merely a right of the family. It was, therefore, regrettable that the laws of Mexico, for example, did not acknowledge the right to housing of single people, and that in the United Kingdom it was mainly families with children that received priority in housing. Even if some countries' legal systems sometimes considered the right to housing as a right belonging essentially to the family, they could not exclude single people, because the right to housing was a universal right.

51. Secondly, the right to housing was part of the right to an adequate standard of living: that was very different to merely possessing four walls and a roof over one's head.

52. Thirdly, the paragraph mentioned "adequate" housing, and that concept should be defined: did it refer to the material condition of the accommodation, the site on which it was built, the facilities, the cost, the distance from the occupier's place of work, social and other services, security of tenure, protection against eviction?

53. Fourthly, States parties to the Covenant undertook to "take appropriate steps to ensure the realization" of the right to housing. Housing policy and regulations should be consistent with the people's needs: it should, consequently, be forbidden to take measures which would increase the number

of homeless people and those evicted from their homes and allow a housing market to develop in which the cost of accommodation was beyond the means of those who needed it.

54. Fifthly, the same paragraph recognized "the essential importance of international co-operation based on free consent". At the very least, such co-operation should respect the right to housing, and the policies of the international financial institutions and banks must take into account the obligations of States with respect to the right to housing. Incidentally, projects relating to human settlements and housing had received less than 5 per cent of all the credits granted under international co-operation to date.

55. When speaking of the realization of the rights contained in article 11 (1), it was essential to distinguish between rights which could be implemented immediately and those which could be implemented only progressively. In the first category, States must: firstly, acknowledge that the right to housing was a human right and take steps to ensure that it was respected; secondly, adopt legislation to prohibit all forms of discrimination against certain population groups, particularly those who currently had no such protection; thirdly, ensure that individuals and competent organizations were able to participate effectively in housing planning; fourthly, annul or amend laws which prevented or hampered the implementation of the right to housing; fifthly, grant all citizens equal rights in housing matters; and, sixthly, change their housing policies to take into account the needs of the most underprivileged groups.

56. Measures which could be only gradually implemented included the realization of short-term, medium-term and long-term plans and policies on the various aspects of the right to housing and the adoption of measures legalizing the occupation of land by people who had been obliged to occupy land illegally.

57. The obligations of States in respect of the right to housing were to guarantee respect for and protection and realization of that right. For example, individuals must be protected against eviction, harassment or anything else which affected their private lives. They must also be protected against such measures as arbitrary rent increases, discrimination of any kind or failure by the landlord to abide by minimum housing standards. It was essential to monitor and regulate the housing market, introduce policies which met the people's needs, guarantee security of tenure, control rent levels and make provision for financial and other measures to house homeless people.

58. The various non-governmental organizations concerned with the protection of housing rights were campaigning for the preparation of a definition of the right to housing itself. He read out a text listing the various components of the right to housing which were valid in all countries: security of tenure, an affordable rent which allowed the tenant to meet his accommodation costs without preventing him from meeting his other basic needs, access to a site with guarantees of price, security and freedom from pollution, access to basic infrastructures, social services, schools, health services and transport, the opportunity to obtain information about the existence of such accommodation, legal aid and special measures for the disabled and the elderly.

59. On the other hand, the definition would not place too much emphasis on the question of habitability. In some countries, the quality of accommodation depended on the scale of the development programmes dealing with housing. The developing countries, for instance, used criteria different from those applied by the developed countries. Housing was important not in itself, but for what it gave those who lived in it.

60. In respect of control and participation, he considered that individuals should be able to control what happened to them and should not be dependent on the goodwill of a landlord or the State. They should be able to choose the kind of house they wanted, take part in decisions on their environment and choose the place where they wanted to live. They should enjoy the right to housing on an equal basis, whatever their sex, race, colour, language or political affiliation. Finally, groups which were inadequately protected where housing was concerned, such as young people, homosexuals, the disabled, ex-prisoners or AIDS victims, should not suffer discrimination in housing matters.

61. Many elements of the right to housing could be defended in law to a greater or lesser extent. The question whether housing rights could or could not be invoked in court could be approached from the angle of civil and political rights. Could those rights be invoked to guarantee respect for the right to housing? It was a possibility which could be considered, at least for some elements of the right to housing, such as the right to privacy, the right to security of tenure or the right to life. It might also be possible to go to court to appeal against expulsion.

62. On the subject of violations of the right to housing, he listed a number of acts and omissions which entailed violations of that right. The most typical example of such measures was expulsion, whether mass expulsions (displacement of populations) or forced expulsions. Between 1983 and 1988, for example, 800,000 destitute people had been expelled from Seoul in the Republic of Korea. The former régime in Romania had planned to drive out the inhabitants of 8,000 villages in order to increase the amount of arable land. In Calcutta, about 15,000 people had been expelled from their homes over the previous four years; and the Dominican Republic planned to expel a large number of people to make way for celebrations commemorating the discovery of America, to be held in 1992. Such evictions were a violation of human rights in general, and the right to housing in particular. Demolition of housing, or the denial of essential public services such as water, electricity or heating to certain groups - as had happened in Tibet - were further measures which violated the right to housing.

63. In certain circumstances failure to act could also be considered as a violation of the right to housing: the refusal of a State to take the "appropriate steps" referred to in the Covenant, the retention of legislation which was clearly incompatible with the provisions of the Covenant or the non-application of legislation designed to protect the right to housing.

64. Mr. Alston had asked how the right to housing was defined in various national legal systems, whether those definitions were in accordance with international law and how peoples exercised those rights. In his own opinion, the Committee must think about the nature of the obligations arising from the right to housing as it appeared in the Covenant. It must also try to decide upon specific measures which it could ask States parties to take in order to

ensure respect for the right to housing. In the same way, the Committee could consider ways of invoking the right to housing before the courts and try to identify aspects of it which could be defended in that way.

65. Turning to ways of applying the principle of non-discrimination in housing matters, he said that, with the exception of the United States, most countries did not recognize the principle and were making little effort to eliminate discrimination in housing. That was true, for example, in the Netherlands, where discrimination still existed in many forms.

66. Mr. Alston had also mentioned the role played by the divisibility of rights in the guarantee of equal treatment to all individuals. It was impossible to separate the enjoyment of certain civil and political rights from the enjoyment of the right to housing and certain other economic, social and cultural rights. For example, millions of people throughout the world were denied the right to vote merely because they had no permanent address. In many countries, a person who was unable to exercise certain civil and political rights was also denied his right to housing.

67. On the issue of the place to be given to the right to land under the Covenant he said that, in most developing countries, land was an essential pre-condition of the right to housing and that, consequently, the right to land should be included in any definition of the right to housing drawn up by the Committee. In almost all third world cities, at present, between 50 and 80 per cent of housing was built by those who were to live in it. It was thus neither the State nor the private sector which was resolving the housing problem - which showed the need for Governments to change their housing policies. They could, for example, expropriate land which was not used by its owners and give it to people who were occupying it illegally. That was the case in India where, since 1976, there had been a law limiting the amount of land which one individual could own. If an owner had more land than he was entitled to and did not put it to good use, it was taken from him, with compensation, and the land used for housing for people with low incomes.

68. It was also important to decide what the right to property meant in the context of the right to housing. Was it the right to buy everything one wanted if one could afford it, or was it the right to a minimum amount of space? Most campaigns for the right to housing were based on the second definition.

69. In his opinion, the Commission on Human Settlements had not paid much attention to the right to housing. For example, various non-governmental organizations had asked the Commission at each of its sessions to adopt basic resolutions on the right to housing, and had called upon the Centre for Human Settlements to take specific measures, but without results.

70. The legal questions relating to the right to housing were really the concern of the Committee, but the Commission on Human Settlements could help it by making suggestions, informing it on certain issues and recommending strategies along the lines of the Global Strategy for Shelter to the Year 2000.

71. Turning to the activities of non-governmental organizations at the national level, he said that there were many national campaigns for the right to housing under way in the world, the largest being the campaign in India over the past three years. However, if the Committee wanted non-governmental

organizations to take a greater part in its work, it must show them that it was worth doing so by adopting specific measures. The non-governmental organizations wanted results: they wanted the Committee to adopt recommendations, to declare evictions to be violations of the right to housing, to provide a legal interpretation of the right to housing which could be invoked in national courts, and many other things.

72. Mr. KÜNNEMANN (Food First Information and Action Network - FIAN) said that some of the remarks made about the right to housing were also valid for the right to food. The organization which he represented, and of which he was the Director-General, had been established in 1986 and dealt with the right to feed oneself. It intervened in specific cases of violation of the right to food, and considered that article 11 was entirely applicable to such specific situations.

73. Article 11 consisted of two parts: the first concerned the right to an adequate standard of living, and the second dealt with the obligation of States parties to take measures to guarantee the right to food - measures which, the text said, should be taken in such a way as to achieve the "most efficient" development and utilization of natural resources. That concept of efficiency was very important, and it applied equally to the measures to be taken to guarantee the right to housing.

74. Paragraph 1 called upon States parties to take "appropriate" steps to ensure the realization of the right to food, housing, etc. However, States would have to familiarize themselves with the housing and food situation in their country before they could do so. Article 2 of the Covenant also had something to say about the measures to be taken, calling upon every State party to commit itself to taking steps "to the maximum of its available resources" and "without discrimination". There was, therefore, a need for a system to show whether the State concerned was really using all "available resources" to guarantee the fundamental right to food. The only way of preventing discrimination was to identify the groups which suffered it. As far as article 11 was concerned, the victims of discrimination were those who did not have the financial resources to obtain adequate food and housing.

75. Since States were supposed to be taking "appropriate steps" to guarantee the realization of the rights contained in article 11, they should be asked a number of questions. It would be necessary to find out the extent to which the public authorities were aware of the human rights situation in the country using, for instance, statistics published by national bodies and international organizations (unfortunately, neither the World Bank nor the Food and Agriculture Organization of the United Nations published country-by-country food statistics), and by paying special attention to vulnerable groups and under-privileged areas. Secondly, it would be necessary to find out whether Governments had clear and precise policies and objectives and whether the necessary choices had been made. Thirdly, it would be necessary to ask how much public opinion and the people had been consulted and involved in those policies, for instance through non-governmental organizations or trade unions. Finally, it would be necessary to discuss the problems and failures which had occurred and the measures taken to resolve them.

76. It was an artificial distinction to separate economic, social and cultural rights from civil and political rights. Any violation of the right to adequate food, for example, must necessarily be accompanied by oppression

and thus by violations of civil and political rights. The rights contained in the two Covenants had a common source in the concept of human dignity. It would, in fact, be preferable to speak of "the right to feed oneself", rather than of the right to adequate food.

77. The right to land was a crucial right for poor people in rural areas, for whom agriculture was the only means of subsistence. It should not be confused with the right to property, because there could be a conflict between the two, particularly in the case of indigenous populations, who worked the land - and had sometimes done so for many years - without having title to it.

78. The right to housing was often infringed by the development process itself, which led to large-scale displacement of the population. Bodies such as the World Bank or the International Monetary Fund should be made aware of that point.

79. To sum up, he said that it was essentially necessary to ask the following questions for every country: (i) who were the impoverished? (ii) how had they become impoverished? (iii) when and how would the situation be remedied?

80. Mr. TEXIER noted with approval the high quality of the current debate. The wide-ranging nature of the remarks which had been made - and no doubt there were more to come - on the right to adequate housing showed the scale of the task before the Committee if it wished to review the whole of the Covenant.

81. The right to land played a crucial part in the exercise of the right to an adequate standard of living, and it must be acknowledged that any developing country which had not carried out agrarian reform had automatically violated the Covenant. That was the case, for example, in Guatemala and Haiti. It was essential, therefore, to question States in a systematic manner about their completed or planned agrarian reforms.

82. He could see two kinds of discrimination which applied to the right to housing. To take the example of France, there was, firstly, blatant racial discrimination which was explicitly prohibited by law, although such offences were rarely effectively prosecuted; then there was a more subtle discrimination arising from the geographical distribution of people's homes. Most of the 4.5 million or so foreigners in France were immigrant workers with low incomes, and it sometimes happened that, because of segregation by wealth or because communities established a quota based on the dubious concept of a "threshold of tolerance", the foreigners were concentrated in problem areas or estates. Despite the measures which had been taken at various levels, it was evident that the problem had not yet been solved.

83. As a judge himself, he had often had to rule on cases where the right of ownership was in conflict with the right to housing. For example, in cases of non-payment of rent, the judge had to decide whether the destitution of the tenant carried more weight than the right of ownership. If he ordered the tenant to be evicted, it was presumably because he considered that there were rights more important than the right to housing. In some cases, he could also state that the evicted tenant must be rehoused. In France, the courts were still not referring directly to the Covenant, but they seemed to be placing more and more emphasis on the right to housing, although there was still little jurisprudence on the subject. He would welcome the opinion of the other experts on the issues he had raised.

DRAFT GENERAL COMMENTS ON ARTICLE 22

84. The CHAIRMAN suggested that, before he closed the meeting, the Committee should study the draft general comments drawn up by Mr. Alston with a view to adopting them before the end of the session.

85. Mr. ALSTON said that it would be better not to adopt the draft general comments until they had been translated into all the working languages. If necessary, the adoption of the comments could be postponed until the next session.

86. Still on the subject of international co-operation, he recalled that several experts, including Ms. Taya, had emphasized the importance of such co-operation at the current session, and that the Committee had wanted to adopt a document on the issue since its first session. He further recalled that commentators generally agreed that, if a State did not have the means to realize the rights contained in the Covenant, it was entitled to ask for international assistance.

87. International co-operation was mentioned several times in the Covenant, particularly in article 2 (1), but also in article 11. At some stage, it might be interesting for the Committee to draw up some general comments on the commitment undertaken by States parties under those two articles. In the United States, those who had opposed ratification of the Covenant had seen that commitment as an obligation on the part of the rich countries to meet the needs of the poor countries. That was clearly not the case, but the Committee should think about how far the commitment actually went.

88. Finally, international co-operation was mentioned in articles 22 and 23. Unlike article 22, which emphasized the role of United Nations bodies in technical assistance, article 23 dealt with international co-operation in a much more general manner.

89. He requested members of the Committee to give him their observations on the text by Thursday, 1 February.

90. Mr. KONATE asked for clarification on the scope of the general comments, since Mr. Texier's draft had dealt with articles 22 and 23, but Mr. Alston's draft dealt only with article 22.

91. The CHAIRMAN replied that, as far as he was aware, the Committee was only to examine general comments on article 22 at the current session.

The meeting rose at 1 p.m.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1990/SR.23
5 February 1990

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 January 1990, at 3 p.m.

Chairman: Mr. BADAWI EL SHEIKH

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GE.90-15393/1494B

ORGANIZATION OF WORK (agenda item 4) (continued)

1. The CHAIRMAN, noting that the Committee had to decide how many State party reports to consider at its fifth session in November 1990, drew attention to the revised list of reports received by the Secretary-General as at 26 January 1990. The Committee might wish to consider the reports of the first 12 States on the list. Since four were global reports and required three meetings each for discussion, that left six meetings for the remaining partial reports. He assumed there would be some cancellations among the 12 States; if there were none, the Committee might ask for additional meetings during its session.

2. Mr. SIMMA noted the ever-lengthening list of "drop-outs" and the Committee's increasing backlog. Supported by Mr. TEXIER, he suggested that Governments should be informed that the Committee would discuss their report at its fifth session whether or not a delegation from the State party was able to attend.

3. Mr. NENEMAN, supported by Mr. KOUZNETSOV, said that the Committee should take care not to create a precedent. To discuss a State party report in the absence of a delegation, especially in the cases where reports were long out of date, would not be very productive. It was better to be flexible, "overbook" and assume that there would be cancellations.

4. The CHAIRMAN proposed the following procedure. Provisionally, the Committee would plan to consider the first 14 reports on the list, namely those of Afghanistan (E/1984/6/Add.12), Jordan (E/1982/3/Add.38/Rev.1), Panama (E/1984/6/Add.19, E/1986/4/Add.22), the Islamic Republic of Iran (E/1982/3/Add.43), Luxembourg (E/1990/5/Add.1), Democratic Yemen (E/1990/5/Add.2), the Democratic People's Republic of Korea (E/1988/5/Add.6), Ecuador (E/1986/3/Add.14, E/1988/5/Add.7), Costa Rica (E/1990/5/Add.3), the Syrian Arab Republic (E/1990/6/Add.1), the Dominican Republic (E/1990/5/Add.4) and Finland (E/1990/7/Add.1). The Secretary-General would be requested to write to those States seeking confirmation of their intention to send a delegation and informing them that consideration of their reports had been postponed several times and that their report might be considered in the absence of a delegation. According to the response received, the Secretary-General, in consultation with the Chairman, would adjust the number of reports to be considered by the Committee.

5. Mr. SIMMA agreed with that arrangement. The Secretariat might also contact the States concerned to inquire as to the reason for any request for postponement. If, for example, the Government considered the report to be outdated, a valid reason, it should be asked when it intended to present its revised report.

6. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee accepted his proposal.

7. It was so decided.

8. The CHAIRMAN noted that the pre-sessional Working Group would be meeting to divide its work on all the reports by States parties, set a deadline for each expert to submit his list of issues for translation before its session and elect its Chairman/Rapporteur. In conducting its work the pre-sessional

Working Group would take into consideration Mr. Alston's remarks on the need to confine questions to a framework that took into consideration the limited time available to the Committee and its present methods of work.

GENERAL DISCUSSION ON THE RIGHTS CONTAINED IN ARTICLE 11 OF THE COVENANT (E/1989/22, para. 332) (agenda item 8) (continued)

9. Mr. BARSH (Four Directions Council) said that the Global Consultation on the Right to Development held earlier that month had had an extensive discussion on the design of criteria for measuring progress in the realization of economic, social and cultural rights. It had underscored three basic issues for understanding not only article 11 but the rest of the Covenant: firstly, quality as well as quantity, i.e. not just the number of housing units, but their design, their location and who controlled them; secondly, process as well as results, i.e. who made decisions concerning a housing programme and how the decisions were made; and thirdly, participation of the people involved as a linkage between process and quality. All those considerations derived from article 1 of the Covenant, its relationship with the articles of the International Covenant on Civil and Political Rights that dealt with freedom of association and the right to participate in political processes, and from the Declaration on the Right to Development.

10. From his own experience in development projects with indigenous people in North America over the previous 20 years, he offered four examples of difficulties that arose if those factors were ignored. Firstly, cluster housing reduced costs, but problems arose from the mixing of families, close quarters and, above all, the loss of access to garden plots, fishing or gathering areas. Distance from food supplies, the point at which food and housing converged, was critical. The second example concerned interior design. Tiny kitchens and inadequate food-storage and sleeping space were more appropriate for middle-class families with few children and little collective eating and social gathering. The third example was architecture. Inappropriate materials, such as poorly-ventilated cinder block in the desert and poorly-insulated wooden clapboard in the Arctic, raised problems not only of habitability but of heating costs. Fourthly, ownership or control of house and land was critical if people were to maintain and improve the house and invest in nearby economic activities such as farming.

11. Housing programmes, therefore, could be inadequate even if a sufficient number of units were built at very high cost - e.g. nearly $100,000 per unit in North America - precisely because the people affected were not involved in design or implementation. The best programmes not only provided resources for people to plan and build their own housing but stimulated the use of local materials and the growth of the building trade and facilitated organized planning and implementation by local groups.

12. Turning to the three points which Mr. Alston had suggested should be raised with States parties to assess compliance with the right to housing, he himself would pose them in the following way: 1. provide statistics on inputs and outputs for different ethnic and social sectors of the population, with an explanation of differences; 2. explain in detailed steps exactly how an individual could assert or exercise the right to housing; and 3. describe the mechanisms which existed for people to participate collectively in the design and evaluation of State programmes.

13. In conclusion, the Global Consultation had agreed that human rights norms should be included in the project appraisal and design guidelines of United Nations agencies, as if they themselves were bound by the Covenants.

14. Mrs. HÄUSERMANN (Rights and Humanity: the International Movement for the Protection and Realization of Human Rights and Responsibilities) urged the Committee to give a wide interpretation to article 11. The main right enunciated therein was an adequate standard of living, while the corresponding phrase in article 25 of the Universal Declaration of Human Rights referred to "a standard of living adequate for ... health and well-being". Thus there was an element of the quality of life rather than mere satisfaction of basic needs and compliance should be a dynamic process as article 11 itself suggested. The Committee should focus on the current standard of implementation of the Covenant and the obstacles, such as poverty, to improving it rather than on legal niceties. Important factors were popular participation and the relationship of article 11 to other articles providing, for instance, for the rights to work and to cultural activities.

15. It was helpful to lay stress on the disadvantaged groups but attention should also be paid to the situation of women, for which disaggregated statistics were required. In the IMF/World Bank report on absolute poverty, there was a reference to the disproportionate number of women in such groups. The same was true of homelessness. The Committee should ask States parties specific questions about legal restrictions on property onwership by women, the inheritance rights of widows and the position of single-parent families. The "feminization" of poverty was an aspect about which the Committee should seek expert information from other United Nations bodies. With regard to the question asked by Mr. Alston about the relationship between civil and political rights on the one hand and economic, social and cultural rights on the other, she thought it was essential to consider the whole range of human rights together. Indeed, that necessity had been pointed out by the Human Rights Committee in its comment on the right to life. It might be appropriate to invite a member of that Committee to address the Committee on Economic, Social and Cultural Rights. Being homeless affected the possibility of enjoying other rights: for example, in industrialized countries, individuals could not exercise the right to vote without being placed on the electoral roll. Homeless people also encountered difficulties in sending their children to school. A study prepared for the Commission on the Status of Women (E/CN.6/1989/6/Add.1) dealt with the effects on women of AIDS, which in its turn brought additional problems with housing rights and the right to work. In fact, the pandemic acted as a spotlight on the vulnerability of women owing to their low socio-economic status. The Committee might seek the co-operation of WHO in investigating the implications of AIDS in the context not merely of article 11 but of the entire Covenant.

16. The Committee's relationship with non-governmental organizations might be considered under two headings: how to keep such organizations fully informed about the Committee's work and what input the Committee might receive from them. She suggested that the Committee should contact not only human rights groups but also development groups. Human rights groups could provide information about particular conditions in individual countries that would be useful to the Committee in its consideration of States' reports and development groups could assist States parties to the Covenant with methods of implementing economic, social and cultural rights. As requested, she suggested three questions which might be put to States parties:

"1. What criteria does the State use to define an adequate standard of living and what are its component parts (income, access to services, access to needs, access to rights beyond basic needs such as recreation)?

2. Are there any individuals or families or regions of the country where, owing to impoverishment or social disadvantages, people do not live in accordance with the criteria mentioned in question 1? Disaggregated statistics would be required in answer to that question.

3. What is the State doing with regard to the progressive achievement of the full enjoyment of the right to an adequate standard of living? Is the right of people to participate in the design and implementation of State policies and programmes being respected?"

17. In conclusion, she commended the Committee's current practice of asking States whether non-governmental organizations had participated in preparing their reports and urged that NGO involvement should be reflected in all the questions put to States parties.

18. Mr. von der WEID (Antenna Internationale) said that he wished to deal with four points, namely the definition of a narrow but enforceable right to housing-wide definitions were legally useless and, politically, enabled authorities to escape their obligations; the obligations a State must undertake to satisfy that minimum right; the action non-governmental organizations must take to monitor compliance since they had no international authority; and the use of appropriate technology which would largely provide the answer to the housing problem. He cited the experience in Geneva where 30 organizations had decided that the right to housing would never be respected unless they launched a popular initiative to amend the constitution of the state of Geneva as they were legally entitled to do by collecting the requisite number of signatures. They had a precedent in the canton of Jura, where the right to housing was recognized in the Constitution; the state and communes were responsible for seeing to it that everyone obtained appropriate housing under reasonable conditions and that steps were taken to protect tenants against abuse, namely, an improper exercise of the right to property. The Geneva initiative included the following features: the right to housing should be constitutionally guaranteed; the state and the communes should create and encourage conditions to enable everyone to have appropriate housing and they should undertake to combat speculation in land and housing, by constructing and subsidizing housing, giving priority to low-rent accommodation; preference should be given to non-profit-making organizations such as occupiers' co-operatives: as a temporary and exceptional measure, the prices of specific plots of land should be frozen; houses left empty for purposes of speculation should be put back on the market when conditions for expropriation were fulfilled; there should be consultation in the event of disputes; and a procedure should be adopted to let electors and inhabitants of communes participate actively in land development measures. The main points were that there must be a constitutional provision about the right to housing to provide a legal basis for action; that implementation of the necessary measures should be decentralized, failing which there was no possibility of practical application of the constitutional right; and that the authorities should fight speculation since there was a world-wide shortage of housing. Finally, the authorities would not move without organized pressure and, in that connection, non-governmental organizations had much to do.

19. Turning to the question of how the Geneva experience could be adapted to the situation in developing countries, he cited his experiences in Bombay and Bogotá. The first requirement was to define a right in terms of streets and shanty towns since at least one third of the population lived in such conditions. It should be established that the police had no right to demolish a hut or drive people from their place on the pavement without warning. Instructions to that effect to the police and the judiciary would protect thousands of individuals, particularly children, in 30 countries where they were regularly swept up in police raids and imprisoned as vagabonds. Precise and specific action was needed at the international level against national authorities which refused to co-operate. The Convention against Torture might be used to protect the poorest groups who lived in the streets and in shanty towns, since the way in which they were treated did in fact amount to physical and psychological torture.

20. In conclusion, he called upon the Committee to appeal to the World Bank to change its housing programmes, which wasted thousands of dollars and effectively denied the poor their right to housing. He knew from personal experience that a house 15 metres square, with foundations, a door, windows and a roof could be built for between $100 and $150. Machines were available to make bricks out of earth. The Soviet Union had conducted some interesting experiments with basic housing and States could obtain practical advice from non-governmental organizations. It was such modest projects that were required and not expensive and often inappropriate programmes.

21. The CHAIRMAN, speaking in his personal capacity, said that the speakers had drawn attention to the need for international assistance to match the realities in a particular country and to the importance of popular participation. Attention had also been drawn to conflicts of rights, as in the case of the forcible eviction of squatters in order to protect landlords' rights and of street-dwellers and those in shanty towns in the interests of health and public order. The Committee had been given much food for thought.

22. Mr. MARCHAN ROMERO said there should be a relationship between the supply of housing and the demand for housing. In Latin America, there was a great deal of speculation by private investors and contractors. No account was taken of the needs of underprivileged groups. However, it was not solely the State's responsibility to provide low-cost housing, as had been argued. There must be changes in attitude and Governments must enact legislation requiring private builders also to build low-cost housing. He would stress that housing should be provided at low cost but not necessarily free of charge. The housing shortage was being manipulated by demagogic politicians. With proper incentives, the private sector could depoliticize the problem.

23. Mr. von der WEID (Antenna Internationale) said that the problem was one of political will. Any solution required a real dialogue, such as that which had taken place in Vancouver on the problem of housing. The question was how to ensure that at least a few progressive States entered into discussions with people who had very precise ideas on the right to housing, in order to hammer out the beginnings of a policy reorientation.

24. Mr. SIMMA welcomed the fact that the Committee was at last moving away from its initial concept of "constructive dialogue" to something resembling genuine dialogue. Experts' and non-governmental organizations' contributions would be of great value to him in formulating the draft revised guidelines.

In that connection, he formally requested that all members of the Committee should receive copies of the summary records of the Sub-Commission's proceedings with regard to economic, social and cultural rights; of the Habitat Global Strategy for Shelter for the Year 2000; of the documentation of the Global Consultation on the Right to Development relating to the use of economic theory for the measurement of economic, social and cultural rights; of the popular initiative for a change in the Constitution of Geneva (which might provide the Committee with valuable ideas on how to render the right to housing dynamic and enforceable); and of the Indian ruling on pavement dwellers to which Mr. von der Weid had referred in the interval between the morning and afternoon meetings.

25. With regard to justiciability, as Mr. Leckie had said, the greater the degree of justiciability, the greater the chances that the right to housing would be implemented. Yet the scope of that word had not yet been explored. There were various possibilities for judicial bodies to take cognizance of international provisions and principles regarding the right to housing. As Mr. von der Weid had said, as long as the right to housing was not enshrined in constitutional law, it was a right with no teeth to it. But the body of principles, norms and precepts formulated at United Nations level - what academics called "international soft law" - could also contribute to domestic implementation of the right to housing. In the Federal Republic of Germany, there had been a fascinating case involving the theft of illegally imported Nigerian objets d'art. The question before the courts had been the validity of a contract of transport. In 1970 the Supreme Court of the Federal Republic of Germany had decided that a contract under domestic law was invalid because it contravened a UNESCO Convention, albeit one that the Federal Republic had not ratified. While that Convention was thus not binding, it nevertheless indicated the international consensus on the matter of the lawfulness of traffic in art, and had therefore to be taken into account. The basis for the ruling had been a clause in civil law, stipulating that in some circumstances a violation of bonnes moeurs could render a contract invalid. The courts had filled out that concept with the principles agreed on at UNESCO level. From that it could be seen that soft law could indeed have an influence at domestic level.

26. Mr. von der Weid had alluded to the Convention against Torture, and had suggested that certain cases of eviction of the poorest segments of the population could be seen as torture. The point was an interesting one. However, one would have to go into the definition contained in that Convention, in order to see whether the concept of intentionality contained therein could be met.

27. The CHAIRMAN said that arrangements would be made for Committee members to receive copies of the various relevant documents referred to, including the papers discussed at the Global Consultation on the Right to Development and the Habitat Global Strategy. The summary records of the Sub-Commission to which Mr. Simma had referred had already been distributed, along with the ILO recommendation concerning workers' housing.

28. Mr. KOUZNETSOV thanked the non-governmental organizations for the information they had provided, which would be particularly useful in view of the fact that not all members of the Committee were experts on housing and nutritional matters. He concurred with Mr. Simma that the day's dialogue would be particularly useful in drafting the general guidelines. However,

inasmuch as its main task was the evaluation of States parties' positions and attitudes, the Committee should use that information to evaluate States' records in ensuring the rights to adequate housing and food. Economic crisis did not always go hand in hand with a slackening of Governments' attention in that regard. There had been periods of history when Governments had been unable to guarantee the standards that the Committee wished to see upheld. For example, his own country had launched an extremely ambitious housing programme to the year 2000, aimed at providing housing for all, implementation of which was threatened by various developments, such as natural disasters and inter-ethnic strife. Notwithstanding those problems, the programme would undoubtedly be implemented in due course.

29. His understanding of certain terms used in the Covenant which, for ideological, historical, geographical, cultural or other reasons, had been open to various interpretations, had been enhanced by the information provided. However, he had no wish to see a return to the times when disputes had arisen over the meaning of a given term. Mr. Türk had wanted to replace the term "poverty" by the term "impoverishment". In Russian, the former term denoted a statistical situation, whereas the latter denoted a dynamic process. Such semantic reflections might be helpful; nevertheless, members' main task as jurists and economists was to assess Governments' positions vis-à-vis the Covenant.

30. Mr. SPARSIS said that article 11 purported to cover the right to an adequate standard of living. But if that article was viewed in isolation, the Committee would overlook much that needed to be done to secure that right, since article 11 was not comprehensive. An adequate standard of living presupposed the right to work, covered by article 6, the right to fair wages, covered by article 7, freedom of association (article 8), the right to social security (article 9), and the right to the widest possible protection of the family (article 10). Article 11 should thus be viewed in relation to articles 6-10 of the Covenant. Furthermore, without a clear definition of what was meant by an adequate standard of living, it would be very difficult for the Committee to decide whether States were complying with the provisions of that article.

31. With regard to the right to housing, certain groups in urban areas could be considered weak and disadvantaged. Workers in low-income groups, who had no steady work and therefore no bargaining power, and who were usually unorganized, were generally excluded from national housing policies, and overlooked by the trade unions during the collective bargaining process. In his view, it was for the national trade union movements to cater for those low-income groups.

32. Another group that lacked adequate housing consisted of self-employed farmers in rural areas, the quality of whose housing was overlooked by national statistics. While all such persons were housed, his own experience was that, in rural areas, rich and poor alike lacked the facilities that were absolutely necessary to an adequate standard of living.

33. Mr. Alston had asked what three questions should be put in order to discover whether a State party respected the right to housing. He was unable to confine himself to those three questions, or to the question of housing itself. Article 11 did not simply concern food, clothing and housing. An adequate standard of living involved more than those three components. He

would therefore put, not three, but four questions. First, what criteria were used by a reporting State in determining whether its citizens enjoyed an adequate standard of living? Secondly, what practical ways and means were employed to achieve that minimum standard of living? Thirdly, what percentage of its citizens fell below that minimum or adequate standard of living, and why? Fourthly, did the Government have a timetable for achievement of an adequate standard of living for all its citizens, and if so, what was it?

34. Finally, he pointed out that in 1974 his own country had had to rehouse 40 per cent of its population virtually overnight. That operation had been completed by 1979, but in the process the Government had committed all the errors enumerated by the speakers at the day's meetings. First the architects had made mistakes, constructing houses from cement blocks in a climate that suffered extremes of temperature. Then sociological and economic mistakes had been made: fishermen had been rehoused in the hinterland, and farmers in coastal areas. Those mistakes had arisen because, in their haste, those responsible had failed to consult those affected about their needs and requirements. It was for that reason that, in the proceedings of the Committee, he had emphasized constantly the importance of securing the participation of the people concerned in all policies and programmes directly or indirectly affecting their living standards and quality of life.

35. Mr. MUTERAHEJURU said that the Committee had of course recognized the right to housing, and thus indirectly the obligations of States in that regard, but that some States were unable to meet those obligations. That state of affairs was attributable firstly to the resources available to States and, secondly, to the structure of the States themselves.

36. While the Committee was discussing the right to housing in the abstract, the day would come when, in some countries with excess populations, that right would have to be adjusted so as to ensure that obligations were not imposed in the same way on all States. Many States might wish to provide decent housing, but lack the necessary resources. That morning Le Monde had reported that, during his visit to Burkina Faso, the Pope had stopped in astonishment on seeing a mud hut, presumably because mud huts did not exist in his country. He would be still more surprised when he came to visit Central Africa the following September. All States were aware of the need for decent housing, protection against the elements, protection against one's fellow men, and the need for social integration. But what if the resources to provide decent housing were lacking? The people of Rwanda had made do as best they could, setting up co-operatives to build houses from durable materials. The State had been able only to provide an adequate water supply.

37. The right to housing must also be seen within the context of a given society, since custom in some countries dictated that each household must be surrounded by its own enclosure. In those States where land and population problems arose, what would be needed was not agrarian reform as such, but an adjustment of the law of property, since, according to some conceptions, it was difficult to recognize that right as an individual right. To recognize that a family or plan had a vested interest in a portion of land involved recognition of the right of establishment. To fail to recognize that vested interest would be to destabilize part of the population. More reflection was thus needed, in order to ensure that the right to housing could be secured without a portion of the population being destabilized in the process. The

right to housing must guarantee a home, within the meaning of the term as understood in each individual society. Specific features of each society must be borne in mind, and there could therefore be no blanket definition covering all human society.

38. The right to housing that the Comittee sought to guarantee could not be ensured by poor countries without the support of the international community. The question was how to achieve that right in the face of such obstacles as expropriation of property in the public interest, which hindered both the right of establishment and customary law.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Additional information submitted by Zaire, France and the Netherlands (continued) (E/C.12/1990/Misc.15)

39. The CHAIRMAN recalled that the pre-sessional Working Group, and Mr. Konate in particular, had looked into the question of the additional information submitted by States parties and had provided some general comments which were contained in document E/C.12/1990/Misc.15.

40. He drew attention to the practice of the Human Rights Committee, which was that the Committee notified the State party concerned of any decision to examine such additional information.

41. It was important to ensure that any procedure adopted by the Committee on Economic, Social and Cultural Rights in respect of additional information was applied equally to all States parties. He invited the Committee to consider whether it should follow the practice of the Human Rights Committee, and also what procedure it should adopt with regard to the additional information submitted by Zaire, France and the Netherlands.

42. Mr. KONATE said that there had already been extensive discussion in the Committee on the question, and that he had been asked to draft some proposals on a possible procedure to be followed. His suggestions were contained in a paper circulated to members of the Committee. He would welcome comment on his draft proposals.

43. The CHAIRMAN pointed out that the last paragraph of the draft proposals indicated that States parties were to be notified as to when their additional information was to be considered, a procedure which followed that of the Human Rights Committee.

44. Mr. GLAIEL said that it might be appropriate to establish a time-limit of two years within which a State party was to submit its comments on the Committee's conclusions regarding the additional information. The Committee's practice should be uniform in its application: it would not be fair in one case to request information from a State immediately following the submission of its report and in another case to wait for up to four years.

45. Mr. ALSTON said that, while in general terms the Committee could follow the practice of the Human Rights Committee, it should be borne in mind that the latter met for three sessions annually, and could request a State party to appear before it in the fairly near future in order to discuss additional information. There was a danger that the process of considering supplementary information in the Committee on Economic, Social and Cultural Rights, which of course held only one session annually, would spread out over three or four years: it should not be forgotten that the life-expectancy of Governments in recent times had often been less. In his view, the procedure of the Human Rights Committee should only be adopted if Mr. Konate's final provision were reformulated to indicate that the Committee would, as a matter of course, and unless the Chairman decided otherwise in consultation with the Bureau, inform each State party that the additional information it had submitted would be considered by the Committee at the session immediately following its receipt.

46. The request for additional information was an important mechanism for indicating, in a diplomatic way, the Committee's dissatisfaction with the report submitted. If the process were unduly prolonged, Governments would be in a position virtually to ignore that expression of dissatisfaction.

47. With regard to the additional information submitted by Zaire, France and the Netherlands and the general comments contained in document E/C.12/1990/Misc.15, he said that it might be better to postpone any action until the Committee had established its general procedure. However, if that were thought to be an inadequate response, the Committee could decide to keep the matter on its agenda and to inform the three States parties concerned that it would be considering their additional information at its next session, explaining that the postponement was on procedural grounds and in the interests of fairness.

48. The CHAIRMAN said it was his impression that the Committee wished to proceed on the lines suggested by Mr. Alston with regard to the additional information submitted by Zaire, France and the Netherlands. Mr. Alston and Mr. Konate could be asked to draft appropriate wording, and the Committee's position would be reflected in its report.

49. It was so decided.

OTHER MATTERS

50. Mr. ALSTON said that he wished to raise two additional matters.

51. Firstly, he believed that information regarding any cases of discrimination against persons suffering from AIDS would be of relevance to the Committee, and that the World Health Organization should be requested to provide details of any such cases on a regular basis. He understood that such information was available.

52. Secondly, he said that the question of the failure of the Government of the Islamic Republic of Iran to respond to the Committee's invitation to attend its two most recent sessions should prompt the Committee to consider what procedure it should adopt in such cases. There was a danger that, if a State party repeatedly ignored the Committee's invitations or withdrew its participation at the last moment or during the session, the Committee would be

seen not to be fulfilling its mandate. He therefore proposed that, on the third occasion when the Committee was scheduled to consider a report, it should proceed to that consideration even if representatives of the country concerned were not present.

53. The CHAIRMAN said that he could see no difficulty in making the request to the World Health Organization regarding AIDS as suggested by Mr. Alston.

54. He invited members to comment on Mr. Alston's second proposal.

55. Mr. SPARSIS said that the important issue at stake was not the number of times a State party failed to attend, but whether there were good grounds for its non-appearance. It was appropriate that States parties should be asked to give advance notice of their intention not to appear, but he queried whether the Committee was yet in a position to decide on a specific number of non-appearances which would activate its response.

56. Regarding the Committee's procedures in general, he asked whether new procedures discussed in the Committee were being codified in any way for subsequent formal adoption.

57. Mr. KOUZNETSOV said that he had already expressed the view that it would not be desirable for the Committee to consider reports in the absence of representatives of a State party. He could understand Mr. Alston's concern, but felt that it was essential to maintain the principle of "dialogue", which implied the presence of both sides. However, he agreed that States parties should give early notice of their intention not to attend.

58. Mr. ALSTON said that it might be possible to make provision for an exception to his proposed procedure in the event that non-appearance was due to circumstances beyond a Government's control. It should, however, be open to the Committee to apply pressure on a Government which was clearly not acting in good faith.

59. Mr. KOUZNETSOV said that he would like to have time to consider that suggestion.

60. The CHAIRMAN suggested that Mr. Alston could be asked to provide a draft text which could be made available to the Committee on Thursday, 1 February.

61. It was so decided.

62. Mr. ALVAREZ VITA said that the Committee had received a letter from a representative of the Baha'i International Community regarding the initial report of the Islamic Republic of Iran (E/1982/3/Add.43), and he wished to know what action would be taken in that connection.

63. The CHAIRMAN said that time would be allocated on Thursday, 1 February for discussion of the questions raised at the current meeting.

The meeting rose at 6.05 p.m.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1990/SR.24
29 March 1990

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 February 1990, at 11 a.m.

Chairman: Mr. BADAWI EL SHEIKH

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Report of the Committee to the Economic and Social Council

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GE.90-15462/5881A

The meeting was called to order at 11.35 p.m.

ORGANIZATION OF WORK (agenda item 4) (continued)

1. The CHAIRMAN congratulated Mr. Sparsis on his election as Chairman of the pre-sessional Working Group and invited him briefly to relate what the Group had decided at the meeting that had just been held.

2. Mr. SPARSIS said that the five members of the pre-sessional Working Group (Mr. Wimer Zambrano, Mr. Fofana, Mr. Kouznetsov, Mrs. Jiménez Butragueño and himself) had divided up the questionnaires to be prepared for the 21 countries whose reports were pending consideration.

3. Mr. ALSTON said he believed that the Committee had only 14 reports to consider at its fifth session and noted that the list had not yet been distributed to the other members of the Committee.

4. The CHAIRMAN said that the list would be distributed to all the experts shortly.

5. Mr. SPARSIS added that, although it was true that the Committee would be considering only 14 reports at its next session - including the reports of Panama, Luxembourg and Iran, for which questionnaires had already been prepared - it would nevertheless have to draw up lists of issues for the 21 country reports that had been submitted. Those questionnaires would be given to the Secretariat by 30 June 1990, whatever the decision by the Economic and Social Council concerning the date of the pre-sessional Working Group's meeting. They would have the same format as the questionnaires considered at the current session, and those preparing them would make every effort to be clear and concise and limit themselves to basic questions.

REPORT OF THE COMMITTEE TO THE ECONOMIC AND SOCIAL COUNCIL (agenda item 9) (E/C.12/1990/CRP.1 and Add.1-12, CRP.2 and Add.1)

6. Mr. ALSTON, Rapporteur, indicated that some changes had been made in the structure of the report. For the first time, the introductory chapter would contain the draft decisions submitted to the Economic and Social Council. Moreover, document E/C.12/1990/CRP.1/Add.1 (future chapter II, section H) contained some new elements that were very important for anyone who wished to learn more about the Committee's working methods.

E/C.12/1990/CRP.1

7. Document E/C.12/1990/CRP.1 was adopted.

E/C.12/1990/CRP.1/Add.1

8. Mr. ALSTON, Rapporteur, proposed that the Committee should postpone consideration of the document until it had been translated into the various working languages.

9. It was so decided.

E/C.12/1990/CRP.1/Add.2

10. Document E/C.12/1990/CRP.1/Add.2 was adopted.

E/C.12/1990/CRP.1/Add.3

Paragraphs 1-6

11. Paragraphs 1-6 were adopted.

Paragraph 7

12. Mr. KOUZNETSOV noted that the last sentence of the paragraph stated that a member of the Committee had wished to know whether there had been cases in which economic and social rights had been invoked before the High Court or administrative authorities. In his view the reference should be not to economic and social rights in general but to the Covenant, and he proposed that the text should be corrected to take that into account.

13. The CHAIRMAN replied that that question had been raised by the pre-sessional Working Group, which naturally had had in mind the rights guaranteed by the Covenant.

14. Mr. KOUZNETSOV expressed satisfaction with that explanation.

15. Paragraph 7 was adopted.

Paragraphs 8-14

16. Paragraphs 8-14 were adopted.

Paragraph 15

17. Mr. KOUZNETSOV, noting that the Russian text spoke of natural children ("vnebrachnye deti"), and children of unmarried couples ("deti rodivchiesya ot lits, ne sostoyashchikh v brake"), said that that distinction did not exist under Soviet law.

18. Mr. ALSTON, Rapporteur, added that Australian law also made no such distinction and said he believed that "natural children" should be taken to mean "adopted children".

19. Mr. KOUZNETSOV, Mrs. JIMENEZ BUTRAGUE O and Mr. WIMER ZAMBRANO agreed that the expression "natural children" should be replaced by "adopted children".

20. Paragraph 15, as amended, was adopted.

Paragraphs 16-23

21. Paragraphs 16-23 were adopted.

Paragraph 24

22. Mr. KOUZNETSOV proposed that the third sentence of the paragraph should be amended to read: "However children under 15 years of age would be allowed to be apprenticed for the purpose of learning a trade".

23. The CHAIRMAN said that the Russian language version of that sentence would be corrected as indicated.

24. Mr. ALSTON, Rapporteur, noted that the amendment proposed by Mr. Kouznetsov applied to all the language versions.

25. Paragraph 24, as amended, was adopted.

Paragraphs 25-29

26. Paragraphs 25-29 were adopted.

Paragraph 30

27. Mr. TEXIER, noting that in the French text the Secretariat had used the word "sidéens" to designate persons suffering from AIDS, wondered whether that was an established term in United Nations vocabulary. In any event, he proposed that the Committee should stick to the expression "malades atteints du SIDA".

28. Mr. MARCHAN ROMERO suggested that the French version should be brought into line with the Spanish formulation "este tipo de enfermos" ("cette catégorie de malades").

29. The CHAIRMAN suggested that the French version should reflect the English expression "those suffering from AIDS" ("les personnes atteintes du SIDA").

30. It was so decided.

31. Paragraph 30, as modified in the French version, was adopted.

Paragraphs 31-37

32. Paragraphs 31-37 were adopted.

Paragraph 38

33. Mr. SIMMA proposed that the concluding observations appearing at the end of the document should be linked more closely to the spirit of the Covenant and, to that end, that the last sentence in paragraph 38 should be amended to read:

> "The Committee expressed concern about this abnormal situation and hoped that the talks under the auspices of the Secretary-General of the United Nations would lead to a just and lasting solution to the problem so as to enable the Government of Cyprus to fulfil its obligations under the Covenant within the entire area of the Republic."

34. Mr. KONATE suggested that, in the second sentence of paragraph 38, the word "abnormal" and the expression "in breach of international law", should be deleted, since they reflected a judgement on the situation in Cyprus.

35. Mr. SIMMA read out the second and third sentences of paragraph 38, amended to take his proposal and Mr. Konate's remarks into account:

> "The Committee noted in particular that, despite the situation obtaining in the country as a result of the fact that part of the national territory had been occupied for the past 17 years by the Turkish army, the Committee could not but appreciate the efforts, both legal and economic, displayed by the Government in the carrying out of its obligations under the Covenant. The Committee expressed concern about this situation and hoped that the talks under the auspices of the Secretary-General of the United Nations would lead to a just and lasting solution to the problem so as to enable the Government of Cyprus to fulfil its obligations under the Covenant within the entire area of the Republic."

36. Mr. NENEMAN expressed doubts about the appropriateness of deleting the word "abnormal", which did not have the legal connotation of the expression "in breach of international law". The Committee had repeatedly acknowledged that the division of the territory of Cyprus had created economic problems characteristic of an abnormal situation.

37. Mr. KONATE, noting that the the United Nations Commission on Human Rights and the United Nations General Assembly, which were political bodies, had refrained from qualifying the situation in Cyprus in order not to jeopardize the Secretary-General's conciliation efforts, said that the Committee should avoid making a judgement on the issue.

38. It was so decided.

39. Paragraph 38, as amended, was adopted.

40. Document E/C.12/1990/CRP.1/Add.3, as amended, was adopted.

E/C.12/1990/CRP.1/Add.5

Paragraphs 1 and 2

41. Paragraphs 1 and 2 were adopted.

Paragraph 3

42. Paragraph 3 was adopted, subject to a minor drafting change.

Paragraphs 4 and 5

43. Paragraphs 4 and 5 were adopted.

Paragraph 6

44. Paragraph 6 was adopted, subject to a minor drafting change.

Paragraph 7

45. Mr. WIMER ZAMBRANO, supported by Mr. TEXIER, said that in the Spanish and French versions, the adjectives "dualista" and "dualiste", in speaking of higher education, were unclear.

46. Mr. ALSTON, Rapporteur, agreed that the terms were incorrect and proposed that the Secretariat should be asked to find a better translation of the expression "two-tier".

47. It was so decided.

48. Paragraph 7 was adopted with that reservation.

Paragraph 8

49. Paragraph 8 was adopted.

Paragraph 9

50. Paragraph 9 was adopted, subject to a minor drafting change.

Paragraphs 10 and 11

51. Paragraphs 10 and 11 were adopted.

Paragraph 12

52. Mr. ALVAREZ VITA proposed that the word "algunos" should be added before the word "miembros", at the beginning of the first sentence of the Spanish version.

53. Mr. WIMER ZAMBRANO supported that proposal and suggested that in the same sentence the word "textbooks" should be deleted, since it was superfluous: textbooks were part of school supplies.

54. Paragraph 12, as amended, was adopted.

Paragraph 13

55. Paragraph 13 was adopted subject to minor drafting changes.

Paragraphs 14-16

56. Paragraphs 14-16 were adopted.

Paragraph 17

57. Paragraph 17 was adopted, subject to minor a drafting change.

Paragraph 18

58. Paragraph 18 was adopted.

Paragraph 19

59. Paragraph 19 was adopted, subject to a minor drafting change.

Paragraphs 20 and 21

60. Paragraphs 20 and 21 were adopted.

61. Document E/C.12/1990/CRP.1/Add.5, as amended, was adopted.

The meeting rose at 1.05 p.m.